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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

BCIS, AAO, 20 Mass, 3/F

425 Eye Street N.W.

Washington, D.C. 20536

File: LIN 03 057 52202

Office: NEBRASKA SERVICE CENTER

Date:

JAN 21 2004

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

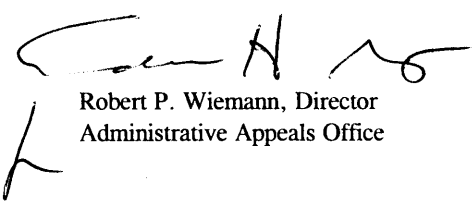
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the petition will be remanded to the director for further action and consideration.

The petitioner is a farming business. It seeks to employ the beneficiary permanently in the United States as a livestock farm worker, or herdsman. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The petitioner filed the Immigrant Petition for Alien Worker (I-140) for classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i).

The director determined that the qualifications for the position of herdsman, as found in Form ETA 750, block 14, required a high school education and four (4) months of experience as a herdsman. The director determined that the petitioner did not establish that the position requires at least two (2) years of training or experience, and denied the petition in a decision dated March 10, 2003.

On appeal, counsel submits an amended page 1, Part 2 of Form I-140 and explains:

[Form ETA 750] has been approved for Unskilled Worker "Herdsman" category, [sic] by mistake we checked box e of Part 2 on Form I-140, we now request to amend this

to uncheck box 3e and correctly check box g, [sic]
please see Exhibition C.

It is the understanding of AAO that it is standard service center procedure to give a petitioner the opportunity to change classification designation when a beneficiary does not qualify under one classification but may under another. The record in this case reveals that the petitioner was afforded no such opportunity. On appeal, the petitioner, through counsel, has asked this petition be considered as one for an other worker pursuant to section 203(b)(3)(A)(iii) of the Act.

Accordingly, this matter is remanded to the director for consideration of the petition under the above statutory provision and pertinent regulations at 8 C.F.R. § 204.5. The director may request any additional evidence deemed appropriate. Similarly, the petitioner may provide additional evidence within a reasonable period of time as determined by the director. On receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to AAO for review.